

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

DEC 26 2023

Mark C. McCartt, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
 v.)
)
ANAGENESIS CAPITAL PARTNERS)
 SBIC FUND, L.P.)
)
 Defendant.)
)

Civil Case No. 23 MC - 13 GKF

**COMPLAINT FOR RECEIVERSHIP UNDER 15 U.S.C. § 687c,
PERMANENT INJUNCTIVE RELIEF AND MONEY JUDGMENT**

COMES NOW Plaintiff, United States of America, on behalf of its agency, the U.S. Small Business Administration, and for its cause of action states as follows:

PARTIES, JURISDICTION AND VENUE

1. This is a civil action brought under 15 U.S.C. § 687c by the United States of America on behalf of its agency, the U.S. Small Business Administration (hereinafter, "SBA"), whose central office is located at 409 Third Street, S.W., Washington, D.C., 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311 and 316, 15 U.S.C. §§ 687(d), 687c and 687h; and 28 U.S.C. § 1345.

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 C/J C/MJ C/Ret'd No Env
 No Cpy's No Env/Cpy's O/J O/MJ

3. Defendant, Anagenesis Capital Partners SBIC Fund, L.P. (“Anagenesis SBIC”), is a Delaware limited partnership pursuant to an amended and restated agreement of limited partnership dated December 29, 2017.

4. As originally licensed by SBA, Anagenesis SBIC’s principal office was located at 757 5th Avenue, 14th Floor, New York, NY 10017. Anagenesis SBIC currently maintains its principal office and/or principal place of business at 515 N. Flagler Drive, Suite 260, West Palm Beach, FL 33401. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. § 1391(b).

STATEMENT OF FACTS

5. Anagenesis SBIC was licensed by SBA as a small business investment company (“SBIC” or “Licensee”) on or about September 26, 2018, SBA License No. 02/02-0686, under Section 301(c) of the Act, 15 U.S.C. § 681(c), solely to do business under the provisions of the Act and the regulations promulgated thereunder.

6. The general partner of Anagenesis SBIC is ACP SBIC Fund GP, L.P., a Delaware limited partnership with a principal office address that was originally located at 757 5th Avenue, 14th Floor, New York, NY 10017, and is now located at 515 N. Flagler Drive, Suite 260, West Palm Beach, FL 33401.

7. SBICs are intended to advance the interests of small businesses by providing financial assistance to small business concerns. 15 U.S.C. § 661.

8. The amended and restated agreement of limited partnership of Anagenesis SBIC submitted to, and approved by, SBA expressly provides that the sole business of Anagenesis SBIC was to operate as a small business investment company pursuant to the Act.

9. Section 308(c) of the Act, 15 U.S.C. § 687(c), empowers SBA to prescribe regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the “Regulations”).

10. Section 308(d) of the Act, 15 U.S.C. § 687(d), provides that, upon determination and adjudication of noncompliance or violation of the Act or the Regulations, all of the rights, privileges and franchises of a Licensee may be forfeited and the company may be declared dissolved.

11. Section 311 of the Act, 15 U.S.C. § 687c, provides that, whenever in the judgment of SBA, a Licensee, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an injunction, and such Court shall have jurisdiction of such action and shall grant permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices. The Court may also appoint SBA to act as receiver for such Licensee.

12. In accordance with Sections 303(a) and 303(b) of the Act, 15 U.S.C. § 683(a) and (b), SBA provided financing to Anagenesis SBIC in the original principal sum of \$95,310,000 (ninety-five million three hundred ten thousand dollars) through the purchase or guarantee of debentures, of which \$75,107,393.04 (seventy-five million one hundred seven thousand three hundred ninety-three and 04/100 dollars) in principal remains outstanding and owed to SBA. Attached as **Exhibit 1** is a true and correct copy of SBA’s Statement of Account for the remaining, unpaid debentures (the “Debentures”)

as of October 24, 2023, which also identifies applicable interest, fees, charges and per diem amounts owed to SBA. **The “payoff” amount owed by Anagenesis SBIC to SBA as of October 24, 2023 was \$75,107,393.04, plus per diem of \$3,420.17.**

13. The Debentures are expressly subject to and incorporate by reference the Regulations, including but not limited to the provisions of 13 C.F.R. §§ 107.740, 1810(f) and 1810(g). Section 107.1810(g)(1)(i) provides that the entire indebtedness of an SBIC to SBA may be declared by SBA to be immediately due and payable upon the happening of certain events of default identified in 13 C.F.R. § 107.1810(f), including without limitation noncompliance and failure to pay SBA.

14. Among the statutory limitations on the investment activities of SBICs is Section 306 of the Act, 15 U.S.C. § 686, which identifies “aggregate limitations” on the amount of financing that an SBIC may provide to any single enterprise.

15. SBA implements the statutory aggregate limitations of 15 U.S.C. § 686 through a regulation found at 13 C.F.R. § 107.740 under the heading of “Portfolio diversification (‘overline’ limitation)”.

16. Based upon information and documents provided by Anagenesis SBIC to SBA pursuant to Anagenesis SBIC’s reporting obligations under the Regulations, SBA determined that Anagenesis SBIC was in violation of the Regulations by exceeding its Portfolio diversification “overline” limitation in § 107.740 and thereby exceeding the “aggregate limitation” under 15 U.S.C. § 686.

17. Anagenesis SBIC’s violation constitutes noncompliance with a substantive provision of the Act because § 107.740 is a substantive regulation implementing 15 U.S.C. § 686, and also because the aggregate limitation on financings is identified in Sec. 310(c) of the Act, 15 U.S.C. § 687b(c)(5).

18. By a letter dated February 22, 2023 (the “Notice of Violation”), SBA notified Anagenesis SBIC that it was in default under terms of its debentures issued to SBA because of Anagenesis SBIC’s violation of 13 C.F.R. § 107.740 of the Code of Federal Regulations. SBA’s letter identified the “overline” amount as being over \$17 million.

19. SBA’s Notice of Violation provided Anagenesis SBIC an opportunity to cure its violation of the regulations within the fifteen (15) day time period provided in the Regulations, 13 C.F.R. § 107.1810(g)(2).

20. By letter dated March 28, 2023, SBA notified Anagenesis SBIC that Anagenesis SBIC had failed to propose an acceptable plan to cure its violation of § 107.740 to the satisfaction of SBA as required by the Regulations under 13 C.F.R. § 107.1810(g).

21. By letter dated April 7, 2023, SBA notified Anagenesis SBIC that Anagenesis SBIC had failed to pay in full and SBA had accelerated the Debentures. On that date, the amount due and owing to SBA was \$86,435,000, plus interest, fees and charges. SBA provided Anagenesis SBIC with fifteen (15) days to pay in full as contemplated in 13 C.F.R. § 107.1810(g). Anagenesis SBIC failed to make payment in full as required, thereby violating 13 C.F.R. § 107.1810(f)(3).

22. Anagenesis SBIC has failed to pay SBA in full on the Debentures. Anagenesis SBIC’s failure to pay SBA all amounts due constitutes a further violation of the Regulations under 13 C.F.R. § 107.1810(f)(3). Anagenesis SBIC remains in violation of applicable law and regulations.

23. Due to Anagenesis SBIC's failure to cure its violation of the Regulations, SBA is authorized under 13 C.F.R. § 107.1810(g)(1)(ii) and 15 U.S.C. § 687c to institute these proceedings for the appointment of SBA as Anagenesis SBIC's receiver.

COUNT ONE

**ANAGENESIS SBIC'S "OVERLINE" VIOLATION IS A
VIOLATION OF APPLICABLE SBA REGULATIONS AND THE ACT**

24. Paragraphs 1 through 23, above, are hereby incorporated by reference as though set forth in their entirety herein.

25. SBA has determined that Anagenesis SBIC is in violation of 13 C.F.R. § 107.740 and thereby in violation of the Regulations, 1810(f)(8) and 1810(g).

26. Anagenesis SBIC is all in violation of 13 C.F.R. § 107.1810(f)(3) for failure to pay all amounts due and owing to SBA under the Debentures.

27. Anagenesis SBIC's violation of the Regulations entitles SBA to relief pursuant to 15 U.S.C. § 687c, including injunctive relief and appointment of SBA as Receiver of Anagenesis SBIC.

COUNT TWO

SBA IS ENTITLED TO A MONEY JUDGMENT FOR THE DEBENTURES

28. Paragraphs 1 through 27, above, are hereby incorporated by reference as though set forth in their entirety herein.

29. Anagenesis SBIC is indebted to SBA under the terms of the Debentures in the principal amount of \$75,107,393.04, plus interest, fees, charges and per diem.

30. The Debentures have matured, Anagenesis SBIC is in default of payment, and SBA is immediately entitled to payment in full of all amounts owed to SBA.

31. Anagenesis SBIC is in default of its obligation to pay the Debentures and owes to SBA as of October 24, 2023: \$75,107,393.04, plus per diem of \$3,420.17, plus post-judgment interest at the rate as allowed by law.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining Anagenesis SBIC, its officers, agents, employees and other persons acting in concert or participation therewith from: (1) making any disbursements of Defendant's funds; (2) without the prior written consent of the receiver, using, investing, conveying, disposing, executing or encumbering in any fashion any or all funds or assets of Defendant, wherever located; or (3) violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate Anagenesis SBIC's default and noncompliance with the Debentures and noncompliance and violation of the Act and the Regulations promulgated thereunder.

C. That pursuant to 15 U.S.C. § 687c, this Court take exclusive jurisdiction of Anagenesis SBIC, and all of its assets, wherever located, appoint SBA as permanent receiver of Anagenesis SBIC for the purpose of liquidating all of Defendant's assets and satisfying the claims of creditors therefrom in the order of priority as determined by this Court, and pursuing causes of action available to Anagenesis SBIC, as appropriate.

D. That this Court direct entry of an order against Anagenesis SBIC which also provides that Anagenesis SBIC's license to operate as an SBIC shall be revoked upon the wind-up and conclusion of the receivership thereof.

E. That this Court enter a money judgment in favor of SBA for the Debentures in the amount of **\$75,107,393.04, plus per diem interest of \$3,420.17 after October 24, 2023**, until the date judgment is entered, and then post-judgment interest at the rate allowed by law.

F. That this Court grant such other and further relief as may be deemed just and equitable and any such other relief to which SBA is entitled at law or in equity.

Dated: December 5, 2023

Respectfully submitted,

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EXHIBIT 1

SBIC Licensee Loan List Report for License: 022020686 - Anagenesis Capital Partners SBIC Fund, L.P. Status: Liquidation - SBIC
Office of Financial Systems

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